

IN THE UNITED STATES DISTRICT COURT  
FOR THE NORTHERN DISTRICT OF CALIFORNIA

CRESCENT CITY HARBOR DISTRICT,

No. C 03-00990 CRB

Plaintiff,

**ORDER GRANTING MOTION TO  
CONFIRM ARBITRATION AWARD**

v.

CHRISTOPHER L. VAN HOOK d/b/a  
GLOBAL CULTURE, and ABALONE  
INTERNATIONAL, INC.,

Defendants.

Now before the Court is defendant's motion to confirm the arbitration award and plaintiff's cross motion to vacate the award. After carefully considering the memoranda submitted by the parties the Court finds that oral argument is unnecessary, see Local Rule 7-1(b), and GRANTS the motion to confirm. The motion to vacate is DENIED.

**BACKGROUND**

In March 1987, defendant Christopher Van Hook (doing business as Global Culture) entered into a 40-year lease with the Crescent City Harbor District (the "harbor lease" or "master lease") for a "commercial maritime business" to grow abalone in the sea water in the harbor. The lease was amended in November 1994 to extend the term for an additional 15 years and to provide Van Hook with additional property for his operations.

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1 In January of 1998, Van Hook arranged to enter into a transaction in which an  
2 investor was to buy a substantial interest in Abalone International (“AI”), a company in  
3 which Van Hook owned a majority interest and had been managing. As a part of the  
4 transaction, Van Hook subleased the property subject to the harbor lease to AI. Under the  
5 lease, Van Hook was required to secure the approval of the Harbor District before entering  
6 into the sublease.

7 Van Hook, who had been serving as an elected member of the Harbor District  
8 commission since 1997, brought the issue before the commission in a public meeting. At the  
9 meeting, Van Hook disqualified himself as a commissioner and instead addressed the panel  
10 as a private citizen. After the hearing, the commission voted 4-0-1 (with Van Hook  
11 abstaining) to approve the sublease.

12 Sometime in late 1996, the District ceased regular dredging operations in the area of  
13 the abalone farm. With no dredging sand and silt began to accumulate in the harbor. By  
14 February 2001 abalone mortalities had risen far above normal levels because their cages were  
15 being buried underneath the rising sea floor. Mortality rates continued to rise until finally, in  
16 early August, the last few surviving abalone were devoured by an invasion of anchovies.  
17 Soon thereafter, Van Hook’s abalone business shut down.

18 The District filed a complaint for declaratory relief in this Court on March 2003,  
19 asking for a declaration that it owed no duty to dredge under the lease or any state laws. Van  
20 Hook moved to send the action to arbitration based on a term in the master lease. The Court  
21 granted the motion on July 2, 2003.

22 On June 1, 2005, the arbitration panel returned a verdict in favor of Van Hook,  
23 ordering the District to pay him \$851,644.25 in damages, \$176,265.00 in fees and \$57,943.03  
24 in costs. The District now moves to vacate this verdict.

## 25 DISCUSSION

### 26 I. Standard of Review

27 Under both California and Federal law, there is a “strong public policy in favor of  
28 arbitration as a speedy and relatively inexpensive means of dispute resolution.” Moncharsh

1 v. Heily & Blase, 3 Cal.4th 1, 9 (Cal. 1992); see also Shearson/American Express Inc. v.  
 2 McMahon, 482 U.S. 220, 226 (1987) (discussing strong federal policy in favor of  
 3 arbitration). As a result, courts will “indulge every intendment to give effect to such  
 4 proceedings,” Moncharsh, 3 Cal.4th at 9, and judicial intervention is to be minimized. Id. at  
 5 10. The court may not review the merits of the controversy between the parties, the  
 6 sufficiency of the evidence supporting the decision, or the arbitrator’s reasoning. Id.

7 Under California law, which applies here, an arbitrator’s award may be vacated for  
 8 reasons provided by statute, if it is found that:

9 (a) The award was procured by corruption, fraud or other undue means; (b)  
 10 There was corruption in any of the arbitrators; (c) The rights of such party were  
 11 substantially prejudiced by misconduct of a neutral arbitrator; (d) The  
 12 arbitrators exceeded their powers and the award cannot be corrected without  
 13 affecting the merits of the decision upon the controversy submitted; or (e) The  
 14 rights of such party were substantially prejudiced by the refusal of the  
 15 arbitrators to postpone the hearing upon sufficient cause being shown therefor  
 16 or by the refusal of the arbitrators to hear evidence material to the controversy  
 17 or by other conduct of the arbitrators contrary to the provisions of this title.

18 Id. at 12 (quoting 9 Cal. Code of Civ. Proc. §§ 1286.2).

## 19 **II. Analysis**

20 The District argues that the arbitration panel’s conclusions should be set aside because  
 21 Van Hook’s membership on the board when the sublease was approved was illegal under  
 22 California corruption laws, rendering the entire transaction--including the master lease--  
 23 invalid. This claim fails for several reasons.

24 First, Van Hook waived this claim by failing to raise it before the arbitrators. The  
 25 governing standard is provided by Moncharsh v. Heily & Blase, which held that if a party is  
 26 not claiming either that the entire contract is illegal or the arbitration agreement itself is  
 27 illegal then failure to raise the illegality claim before the arbitrator waives future judicial  
 28 review. 3 Cal.4th at 31. Here, although the District claims that the purported invalidity of  
 the sublease somehow invalidates the master lease, the language of the sublease is to the  
 contrary: “The Harbor and Kelp Subleases are subject to and subordinate to the terms and  
 conditions of the Harbor and Kelp Master Leases.” See Abalone Int’l, Inc.--Global Culture  
Sublease Agreement, ¶ 4. It is therefore apparent that the District’s illegality argument

1 would not void the master lease. Notably, both the arbitration clause and the terms creating a  
 2 duty to dredge for the District are contained in the master lease. As a result, the District's  
 3 claim of illegality would have no effect on these key provisions. Accordingly, since the  
 4 District did not raise illegality during arbitration, that claim has been waived.

5 Second, assuming that the illegality claim had not been waived, it would not be  
 6 reviewable by this Court. Even though a claim that an arbitration award "was procured by  
 7 corruption, fraud, or other undue means" is subject to judicial review, Cal. Code of Civ.  
 8 Proc. § 1286.2(a), such review is limited to only those cases in which a party claims the  
 9 entire contract should be voided. See Moncharsh, 3 Cal.4th at 31-32. While there is an  
 10 exception to this rule in certain "limited and exceptional circumstances," id. at 32, this case  
 11 does not present such circumstances. Defendant's claims do not implicate the fundamental  
 12 policies embodied in California's anti-corruption laws because, as explained below, the  
 13 sublease is immaterial to the arbitration panel's findings. See Bayscene Resident Negotiators  
 14 v. Bayscene Mobilehome Park, 15 Cal.App.4th 119, 127-128 (Cal. Ct. App. 1993) ("[W]here  
 15 the claim of illegality does not directly implicate the arbitration agreement and affects only a  
 16 portion of the underlying contract, the arbitrator's determination as to illegality is binding  
 17 and not subject to court review.").

18 Third, even assuming that there was no waiver, that the illegality claim were  
 19 reviewable and that the sublease was in fact void for illegality, the arbitration panel's  
 20 decision would still not be disturbed. The sublease played no role in the panel's decision.  
 21 Their findings were premised alternatively on section 12.3 of the master lease and on tort  
 22 theories of trespass, nuisance and negligence independent of any contractual relationship.  
 23 See Final Award of Arbitrators—Abalone Int'l and Crescent City Harbor Dist., at 4-5. The  
 24 District claims that the sublease is a crucial document because it had the effect of assigning  
 25 all of Van Hook's rights in the leasehold to AI. However, assuming this were correct, it  
 26 would only mean that the assignment would be invalid and the rights under the contract  
 27 would be Van Hook's rather than AI's. Since the arbitrators provided that all awards in their  
 28 decision would go to AI and Van Hook jointly, id. at 5, this distinction makes no difference

1 to the District. The alleged illegality of the sublease would at most be a factor in determining  
2 how to distribute the award among the prevailing parties. No matter what the outcome, the  
3 District would still be liable. As a result, the District's illegality argument fails.

4 **CONCLUSION**

5 For the reasons stated above, defendants' motion to confirm the arbitration award is  
6 GRANTED and plaintiff's motion to vacate the award is DENIED. The motion hearing  
7 currently set for August 19, 2005 is VACATED.

8 **IT IS SO ORDERED.**

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11 Dated: August 16, 2005

  
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CHARLES R. BREYER  
UNITED STATES DISTRICT JUDGE

United States District Court

For the Northern District of California